Supreme Court, U.S.
FILED
FEB 27 2001

No. 001358

In the Supreme Court of the United States

DONETTA DAVIDSON, IN HER OFFICIAL CAPACITY AS SECRETARY OF STATE FOR THE STATE OF COLORADO, PETITIONER

v.

DOUGLAS CAMPBELL, KEVIN WILKERSON, RICHARD ADAMS, JOSEPH M. BUERMEYER, KAREN ROBERTS, AND NORMA JEAN LINGEN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

KEN SALAZAR
Attorney General
ALAN J. GILBERT*
Solicitor General
ELIZABETH A. WEISHAUPL
First Assistant Attorney General
Litigation Section

Attorneys for Petitioner
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: (303) 866-5236
FAX: (303) 866-5443
*Counsel of Record

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QUESTION PRESENTED FOR REVIEW

Whether the State of Colorado may regulate its ballot by requiring unaffiliated candidates for federal office to register as electors prior to placement on the Colorado ballot.

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PETITION FOR A WRIT OF CERTIORARI

The Attorney General of the State of Colorado, on behalf of the Secretary of State of the State of Colorado, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit is reported at 233 F.3d 1229 (10th Cir. 2000). A copy of the opinion is included in Appendix A at A-1. The opinion of the District Court for the District of Colorado is reported at 11 F. Supp. 2d 1260 (D. Colo. 1998) and is included in Appendix B at B-1.

JURISDICTION

The court of appeals issued its opinion on November 30, 2000. This petition for writ of certiorari is filed within 90 days of the entry of judgment. The Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1254(1) and 2106.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. I, § 2, cl. 2 provides:

> No Person shall be a Representative who shall not have attained to the Age of twenty-five years, and been seven years a Citizen of the United States, and who shall not, when elected be an Inhabitant of that state in which he shall be chosen.

U.S. Const. art. I, § 4, cl. 1 provides:

> The times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the Legislature thereof, but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.

Colo. Const. art. VII, § 1 provides:

> Qualifications of elector. Every citizen of the United States who has attained the age of

> eighteen years, has resided in this state not less than one year next preceding the election at which he offers to vote and in the county, city, town, ward, or precinct such time as may be prescribed by law, and has been duly registered as a voter if required by law shall be qualified to vote at all elections; except that the general assembly may by law extend to citizens of the United States who have resided in this state less than one year the right to vote for presidential and vice-presidential electors.

Colo. Const. art. VII, § 1a provides:

> Any other provision of this constitution with regard to "qualifications of electors" notwithstanding, every citizen of the United States who shall be otherwise qualified and shall have resided in this state not less than three months next preceding the election at which he offers to vote, and in the county or precinct such time as may be prescribed by law, shall be qualified to vote at all elections; provided, that the general assembly may by law extend to citizens of the United States who have resided in this state less than three months, the right to vote for presidential and vice-presidential electors, United States senators, and United States representatives.
>
> Any person who otherwise meets the requirements of law for voting in this state shall not be denied the right to vote in an

> election because of residence on land situated within this state that is under the jurisdiction of the United States.

Section 1-4-802, Colo. Rev. Stat. (2000) provides in pertinent part:

> Petitions for nominating unaffiliated candidates for a partisan office.
>
> (1) Candidates for partisan public offices to be filled at a general or congressional vacancy election who do not wish to affiliate with a political party may be nominated, other than by a primary election or a convention, in the following manner:
>
> * * *
>
> (g) No person shall be placed in nomination by petition unless the person is an eligible elector of the political subdivision or district in which the officer is to be elected and unless the person was registered as unaffiliated, as shown on the books of the county clerk and recorder, for at least twelve months prior to the last date the petition may be filed; except that, if such nomination is for a non-partisan election, the person shall be an eligible elector of the political subdivision or district and may be a registered elector, as shown on the books of the county clerk and recorder, on the date of the earliest signature on the petition.

"Eligible elector" is defined in Section 1-1-104(16) Colo. Rev. State. (2000) as:

> [A] person who meets the specific requirements for voting at a specific election for a specific candidate, ballot question, or ballot issue. If no specific provisions are given, eligible elector shall be a registered elector, as defined in subsection (35) of this section.

"Elector" is defined in section 1-4-104(12), Colo. Rev. Stat. (2000) as:

> [A] person who is legally qualified to vote in this state ....

STATEMENT

Petitioner Davidson is the Secretary of State for the State of Colorado.[1] She appeals a judgment of the court of appeals holding that section 1-4-802(1)(g), Colo. Rev. Stat. (2000) contains unconstitutional qualifications under Article I, Section 2, Clause 2 of the United States Constitution ("the Qualifications Clause").

Respondent Douglas Campbell ("Campbell") sought to be placed upon the November 1998 Colorado ballot as an unaffiliated candidate for the United States House of Representatives. Following procedures in Colorado law, he

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[1] Victoria Buckley, the former Secretary of State appeared as a party below. Secretary Davidson was substituted in as a party in the Tenth Circuit following the death of Secretary Buckley.

petitioned the Secretary of State to be placed upon the ballot as an unaffiliated candidate. Mr. Campbell's petition was deficient under Colorado law, and was denied. He then brought this action.

In Colorado unaffiliated candidates for elective office can be placed on the ballot by petition to the Secretary of State. § 1-4-802(1)(g), Colo. Rev. Stat. (1997). Under this statute, a petitioner must be an "eligible elector," registered on voter registration rolls as an unaffiliated voter for at least twelve months prior to the last day the petition may be filed.

Campbell is a United States citizen and a resident of Arvada, Colorado. Though Campbell previously was a registered voter, he purposefully withdrew his registration prior to submitting his nominating petition to the Secretary of State. He did so to create this constitutional challenge.

Campbell withdrew his registration to vote on July 13, 1998. His petition to be placed upon the ballot was submitted to the Secretary of State the next day, on July 14. On August 12, the Secretary notified Campbell that his petition contained only 571 valid signatures, less than the 800 signatures required for ballot access. Campbell then submitted a number of additional petitions to cure this defect. At that time, pursuant to the procedures contained in section 1-4-802(1)(g), the Secretary of State checked the ballot roll to determine if Campbell was eligible for placement on the ballot. On August 19, 1998, the Secretary informed Campbell, that his name would not appear on the November 8, 1998, ballot because he was not a registered voter on the day prior to the submission of his petition. § 1-4-802(1)(g), Colo. Rev. Stat. (1998)

The Colorado Secretary of State enforces Colorado's election laws and supervises the conduct of Colorado's elections. § 1-1-107, Colo. Rev. Stat. (2000). Her duty to supervise elections includes the supervision of general elections. § 1-1-107(a), Colo. Rev. Stat. (2000).

It is undisputed that Campbell was not a registered voter in the State of Colorado at the time he sought to place his name on the ballot by petition.

Campbell filed his lawsuit in the federal District Court for the District of Colorado. The Secretary of State moved to dismiss Campbell's Complaint. At a hearing on December 18, 1998, the court treated the filed papers as cross-motions for summary judgment under Fed. R. Civ. P. 56(c). On May 3, 1999, District Court Judge Matsch entered an order declaring section 1-4-802(1)(g) an impermissible qualification on Campbell's candidacy under the United States Constitution.

The Secretary of State appealed to the United States Tenth Circuit Court of Appeals. The Tenth Circuit affirmed the judgment of the District Court, citing other grounds, on November 30, 2000.

REASONS FOR GRANTING THE WRIT

I. COLORADO'S ELECTION PROCEDURES FOR UN-AFFILIATED CANDIDATES ARE A VALID REGULATION OF ITS ELECTION BALLOT.

Colorado and thirty sister states [2] regulate their election ballot by requiring compliance with specific procedures by those candidates for public office who seek nomination to the ballot by petition. The states' regulations vary from requirements of candidate nomination affidavits in which the candidates swear they are qualified electors, *see* Ohio Rev. Code § 3513.073 (2000), to statutes which provide that "any person seeking an elective office shall be a registered voter." Neb. Rev. Stat. § 32-602(1) (2000). This is a constitutional exercise of the states' sovereign authority to regulate their electoral processes. The ruling of the court of appeals in this case impermissibly infringes upon Colorado and her sister states power to regulate their ballots.

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[2] A majority of states require registration as a prerequisite to ballot placement. These states include, Alaska, Arizona, California, Connecticut, Florida, Georgia, Illinois, Indiana, Louisiana, Maine, Massachusetts, Maryland, Minnesota, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Rhode Island, Tennessee, Virginia, Washington, West Virginia, Wisconsin and Wyoming. A petition for certiorari is currently pending before this court from the Ninth Circuit in *Jones v. Schaeffer*, wherein California seeks review of its ballot regulation that candidates for the U.S. House of

The Colorado statute in issue performs important functions for the state. It allows the Secretary of State to ensure that persons who petition to be placed on the ballot as unaffiliated candidates are indeed eligible to run for office as an unaffiliated candidate. It also allows Colorado voters to ascertain that a candidate for federal office placed in nomination by this process meets the three United States Constitutional qualifications: appropriate age, residency in the State of Colorado, and citizenship in the United States of America. Finally, without these procedures, each unaffiliated candidate that files a petition to be placed upon the ballot would be subject to suit for determination of his or her qualifications. Thus, § 1-4-802(1)(g) of the Colorado Revised Statutes fulfills important government interests.

In Colorado, candidates for office who are members of political parties may gain access to the ballot through political party nomination, § 1-4-701, Colo. Rev. Stat. (2000), or by petition, § 1-4-801, Colo. Rev. Stat. (2000); § 1-4-502, Colo. Rev. Stat. (2000). Republicans, Democrats, Libertarians, Greens, Socialist Workers, and Temperance Party candidates, among others, gain ballot access using these procedures. The Colorado electoral statutes also recognize that some candidates for office will have no party affiliation. These unaffiliated candidates can gain ballot access through a petition process.

Unaffiliated candidates must follow the petition procedures contained in section 1-4-802(1)(g) regardless of the particular office they seek. These procedures require an

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Representatives be registered voters and residents of the state prior to election.

unaffiliated candidate-petitioner to be an eligible elector, registered as unaffiliated on the books of the county clerk and recorder for a full twelve months prior to the date of the petition.

These statutory procedures serve important state election interests. They regulate the ballot by ensuring that an unaffiliated candidate placed on the ballot is: *i*) an elector -- *i.e.* someone who resides or is eligible to vote within the jurisdiction of the political subdivision calling the election (in this case Colorado); and *ii*) unaffiliated with a political party for at least a full twelve months, as shown on the books of the county clerk and recorder.

Colorado's statutory election procedure for unaffiliated candidates avoids ballot confusion created when a disappointed candidate from a political party seeks access to the ballot despite a defeat in the party nomination process. Indeed, the procedures provide a sure and convenient administrative check so the Secretary of State can fulfill her constitutional duty to ensure that an unaffiliated petitioner is in fact eligible to be placed upon the ballot as a candidate. The Colorado statute requires and provides the means for the Secretary to check a candidate's "unaffiliated" status on the ballot roll.

The election procedure for unaffiliated candidates also serves the important government interest of allowing the electorate information to ensure that the candidates placed on the ballot are constitutionally eligible for the office they seek. The voter can check the voter registration rolls and ensure constitutional eligibility.

The State of Colorado desires to protect its political process from frivolous or fraudulent candidates, and it has a

duty to do so. *Jenness v.Fortson*, 403 U.S. 431, 442 (1971). The State has an important regulatory interest in protecting the integrity and reliability of the electoral process. *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983); *Baer v. Meyer*, 728 F.2d 471, 474 (10th Cir. 1984) (acknowledging necessity of "substantial regulation of elections if they are to be fair and honest and if some sort of order rather than chaos is to accompany the democratic process"). Colorado's statutory procedures for petitions by unaffiliated candidate fulfill these interests and discharge these duties.

When reviewing challenges to procedures in state election laws, a court weighs the "character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments" against the "precise interests put forward by a State as justifications for the burden imposed by its rule." *Burdick v. Takushi,* 504 U.S. 428, 434 (1992). When applying this flexible standard, a court considers the extent to which the state interests make it necessary to burden rights. *Id.* If the state subjects these rights to "severe" restrictions, the regulations must be narrowly drawn to advance a state interest of compelling importance. *Norman v. Reed*, 502 U.S. 279, 289 (1992). Finally, states have the power to prescribe reasonable and nondiscriminatory regulations regarding voting in federal as well as state elections. *See Hall v. Beals*, 292 F. Supp. 610 (D. Colo. 1968), *vacated as moot*, 396 U.S. 45 (1969).

There is no allegation in this case that § 1-4-802(1)(g) is discriminatory. Colorado law requires candidates for office placed on the ballot using the party caucus system or party nomination by petition to be registered electors. Since section 1-4-802(1)(g) is not discriminatory, the State must show only an important regulatory interest. *Burdick v. Takushi*, 504 U.S. at 434.

Colorado's unaffiliated candidate petition procedures imposed only the most minimal burden upon Campbell and other unaffiliated candidate-petitioners. They are required, first, to register as unaffiliated voters with the county clerk and recorder at least a year before submitting their petition. They are required, second, to maintain that registration for the entire year before their petition was submitted to the Secretary of State. Mr. Campbell's petition foundered on the second requirement.

The court of appeals held that section 1-4-802(1)(g) served no regulatory interest of the State. It ignored the State's regulatory interests outlined above, and did not properly weigh the value of the technical registration statute against the minimal burden placed upon Mr. Campbell to comply with the State's registration requirements.

The "times, places, and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof . . . ." U.S. Const. art. I, § 4. This Court has therefore approved of state elections laws that require candidates to disaffiliate themselves from their political party for at least one year prior to their former party's primary if they wish to appear on the general election ballot as an independent candidate. *Storer v. Brown*, 415 U.S. 724 (1974). Thus the first requirement in section 1-802(1)(g), i.e. - that the person be a registered disaffiliated candidate for one year has no constitutional infirmity.[3]

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[3] If Colorado's voter registration requirement is found to be unconstitutional, despite *Storer*, and unaffiliated candidates are no longer required to register, each unaffiliated candidate will be subject to judicial challenge to determine his or her

The court of appeals distinguished *Storer* in this case. It suggested that *Storer* does not apply to voter registration requirements, because *Storer* only required candidates to be "clear of political party affiliations, for a year before the primary." *Storer*, 415 U.S. at 733. The court of appeals held that Colorado's section 1-4-802(1)(g) procedural requirements did not advance ballot housekeeping and are impermissible. It erred in this regard.

The Colorado Supreme Court has upheld the State's ability to require voter registration as a regulation of the time, place and manner of elections. In *Duprey v. Anderson*, 184 Colo. 70, 518 P.2d 807 (1974), the Colorado Supreme Court reviewed a challenge to the practice of purging of voter registration books of electors who failed to vote at a preceding biennial general election. It held that the requirement of elector registration is a way of "prescribing a procedure by which frauds may be prevented and mistakes avoided on the day of election." *Duprey,* 184 Colo. at 73, 518 P.2d at 809. Thus, registration is "a mechanical adjunct to the election process which enables election officials to determine that the prospective voter has the qualifications to vote on election day." *Id.* If a citizen voter's act of registration is a mechanical adjunct to the election process, a candidate's act of registration is the same.

To be eligible to vote for congressional candidates this Court has long recognized the states' power to require that individuals manifest a commitment to a particular status as a bona fide resident and registered voter. *See Marston v.*

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qualifications. This result would be a major intrusion upon the State's interest in regulating its ballot, and raises concerns of judicial economy and separation of powers.

Lewis, 410 U.S. 679, 681-682 (1973) *per curiae*; *Dunn v. Blumstein*, 405 U.S. 330, 333-34 (1972); *Pope v. Williams*, 193 U.S. 621, 633 (1904); *See also Buckley v. American Constitutional Law Fnd., Inc.*, 525 U.S. 182, 217 (1999) (O'Connor, J. dissenting) (requirement that initiative petition circulators be registered voters is permissible regulation of the electoral process).

Though it is of course important, the privilege of running for office is not a fundamental right that triggers a strict scrutiny of state election requirements. *Bullock v. Carter*, 405 U.S. 134, 142-143 (1972). When it regulates the right to run for office, Colorado is held to the requirement of a reasonable relationship between the regulation chosen and its purpose. Colorado's petition requirements for nonaffiliated candidates surely meet this standard.

Contrary to the view of the court of appeals, § 1-4-802(1)(g) is a rule adopted to allow state election officials to perform basic housekeeping tasks. Colorado citizens may register on the voting rolls as unaffiliated. When Colorado election officials receive a petition by an unaffiliated candidate to be placed on the ballot, they can quickly check the ballot rolls to ensure that the person is indeed unaffiliated for the requisite period of time.

If the court of appeals result stands, the State of Colorado is left in a very difficult position concerning unaffiliated candidates. For example, if a candidate registered 20 years previously for a particular party, has not withdrawn the previous registration, but now claims that he or she is "unaffiliated," the court of appeals' decision requires the Colorado Secretary of State to accept the candidate's petition. At that point, the State would be

required to rely upon litigation to confirm its ballot placement decisions. This result would lead to chaos and great expense.

II. COLORADO'S ELECTION PROCEDURES FOR UNAFFILIATED CANDIDATES DO NOT CREATE AN IMPERMISSIBLE QUALIFICATION FOR FEDERAL OFFICE.

The court of appeals misapplied this Court's decision in *U.S. Term Limits, Inc. v. Thornton* when it struck down Colorado's sovereign regulation of its ballot. This Court should exercise its supervisory function to correct this impermissible interference with a vital state function. Colorado's regulation of its ballot is not an improper qualification for office.

The court of appeals concluded that the procedures contained in § 1-4-802(1)(g) constitute an improper qualification for office akin to the improper qualifications for office created by term limit statutes. Term limitations have been struck down in a variety of situations. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 798 -99 (1995). The court of appeals erred in this regard.

The court of appeals ignored the purpose and effect of Colorado's procedures when it determined that § 1-4-802(1)(g) is an impermissible qualification. It correctly points out that the "Qualifications Clause reinforces 'the true principle of a Republic … that the people should choose whom they please to govern them." 2 *Debates on the Federal Constitution* (J. Elliot, ed. 1876). Nevertheless, it is mistaken in its belief that Colorado's procedures are improper because they prohibit from becoming unaffiliated

candidates (*i*) persons ineligible to register to vote because they are serving criminal sentences or on parole, § 1-2-103(4), Colo. Rev. Stat. (2000), (*ii*) non-residents, § 1-2-101(1)(b), Colo. Rev. Stat. (2000)), and (*iii*) non-registering candidates.

Indeed, the provisions just quoted are not before this Court, and they were not before the district court or the court of appeals. Mr. Campbell stipulated that he was a resident of the State of Colorado and was otherwise eligible to appear on the ballot absent his refusal to comply with the Colorado regulations for unaffiliated petition ballot placement. As described above, Mr. Campbell purposefully withdrew his registration for the sole purpose of creating this litigation. Further, if allowed to stand, the court of appeals' opinion would have a far reaching effect on the states. Many states also prohibit convicted felons from voting. They do so both by statute and constitutional provisions. *See, e.g.*, Al. Const. Art. VII; Minn. Stat. § 201.014 (2000). These sister states' voting regulations are threatened by the court of appeals' opinion, and in fact the felony analysis used by the court of appeals is of limited use in a *Thornton* "qualification analysis".[4]

The key to a *Thornton* qualifications analysis is whether a state regulation creates a impossible burden on the candidate, thus creating an additional and impermissible "qualification." *See Hopfmann v. Connolly*, 746 F.2d 97 (1st Cir. 1984), *vacated in part on other grounds and remanded*,

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[4] *Thornton* mentions *in dicta* that two states, New York and Minnesota concluded that a candidate restriction based on felony convictions is an impermissible qualification under the Qualifications Clause. *Thornton*, 514 U.S. at 799.

471 U.S. 459 (1985), *on remand*, 769 F.2d 24 (1st Cir. 1985) (where a candidate could run as a "write in candidate" the candidate retained his eligibility for election to the Senate; therefore, party rule could not be considered a qualification); *Benesch v. Miller*, 446 P.2d 400 (Alaska 1968) (state prohibition of write in candidacy of primary losers an impermissible qualification). However, as noted earlier, section 1-4-802(1)(g) does not create any additional qualification for office; this is underscored by the nominal burden the registration requirement creates.

The Tenth Circuit's decision impermissibly weakens the integrity of the electoral process. The Supreme Court acknowledged that States "were entitled to adopt 'generally applicable and evenhanded restrictions that protect the integrity and reliability of the electoral process itself'." *Thornton*, 514 U.S. at 835. The Supreme Court has approved State's interests in avoiding "voter confusion, ballot overcrowding, or the presence of frivolous candidacies." *Id.* (citing *Munroe v. Socialist Worker's Party*, 479 U.S. 189 (1986)) Further, the *Thornton* court explained that in *Storer*, as in the instant case, the specific regulation was, "expressive of a general state policy aimed at maintaining the integrity of the various routes to the ballot." *Id.* The Supreme Court noted:

> The provisions at issue in *Storer* and in our other Election Clause cases were thus constitutional because they regulated election *procedures* and did not even arguably impose any substantive qualification rendering a class of potential candidates ineligible for ballot position. . . . Our cases upholding state regulation of election procedures thus provide little

> support for the contention that a state imposed ballot access restriction is constitutional when it is undertaken for the twin goals of disadvantaging a particular class of candidates and evading the dictates of the Qualifications Clause.

U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 at 834. Here, the procedures contained in section 1-4-802, Colo. Rev. Stat. (1997) do not disadvantage any class of candidates and were intended only to maintain the integrity of the various routes to the ballot and ensure the Secretary's and the voters' ability to check on a candidate's constitutional qualifications.

A further policy reason dictates that this court should accept certiorari to review the decision of the Tenth Circuit's decision. This common sense reason stems from the fundamental form of our government. We live in a representative democracy. The voters elect a member of the whole to represent their interests. A person who, for one reason or another, chooses not to be a part of that electorate cannot logically represent the whole.

A person who has not attained the age requirement of the Constitution, i.e. 25 - cannot represent the whole. A person who is not a U.S. citizen - or who chooses to renounce his citizenship - could not represent the whole. These "qualifications," age and citizenship cannot be attained without great burden, i.e. the passage of time - to attaining 25 or waiting 7 years after accepting citizenship. Colorado's regulation, by contrast, can be overcome by a mechanical act - registering as an elector - an act that can be accomplished at the driver's license bureau or even by postcard. See §§ 1-2-213; 1-2-208, Colo. Rev. Stat. (1998).

CONCLUSION

The petition for a Writ of Certiorari should be granted.

KEN SALAZAR
Attorney General
ALAN J. GILBERT*
Solicitor General
ELIZABETH A. WEISHAUPL
First Assistant Attorney General
Litigation Section
Attorneys for Petitioner
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: (303) 866-5236
FAX: (303) 866-5443
*Counsel of Record

APPENDIX A

PUBLISH

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

DOUGLAS CAMPBELL, KEVIN WILKERSON, RICHARD ADAMS, JOSEPH M. BUERSMEYER, KAREN ROBERTS, AND NORMA-JEAN NICOLE LINGEN, Plaintiffs-Appellees, v. DONNETTA DAVIDSON, in her official capacity as Secretary of State for the State of Colorado, Defendant-Appellant.	No. 99-1257

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO (D.C. NO. 98-M-1929)

Elizabeth A. Weishaupl (Ken Salazar, Attorney General, with her on the briefs), First Assistant Attorney General for the State of Colorado, Denver, Colorado, for the Appellant.

Paul Grant, Englewood, Colorado, for the Appellees.

Before **HENRY**, and **BRISCOE**, Circuit Judges, and **ALLEY**, District Judge.*

HENRY, Circuit Judge.

The Secretary of State for the State of Colorado ("State") appeals the district court's grant of summary judgment which held that the State's imposition of additional qualifications on a person seeking federal office violated Article I, § 2, cl. 2 of the United States Constitution. We have jurisdiction under 28 U.S.C. § 1291 and, for the reasons set forth below, we affirm.

I. BACKGROUND

The State denied Douglas Campbell's nomination by petition as a candidate for election to the United States House of Representatives for the November 3, 1998 election. Mr. Campbell sought a preliminary injunction against the State in the court below, which was denied. The State then moved to dismiss, and

the district court transformed the pleadings into cross-motions for summary judgment under Fed. R. Civ. P. 56(c).

The material facts are not in dispute: In July 1998, Mr. Campbell, sought access to the ballot as an unaffiliated candidate for the United States House of Representatives for the Second Congressional District of Colorado through nomination by petition. Under Colorado law, "[n]o person is eligible to be a designee or candidate for office unless that person fully meets the qualifications of that office as stated in the constitution and statutes of this state on or before the date the term of that office begins." Colo. Rev. Stat. Ann. § 1-4-501(1). Mr. Campbell was a resident of Arvada, Colorado, and at the time he submitted his nominating petition to the State, he was not a registered voter. In August 1998, the State informed Mr. Campbell that his name would not appear on the November 1998 ballot because he was

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* The Honorable Wayne E. Alley, Senior district Judge, United States District Court for the Western District of Oklahoma sitting by designation.

not registered to vote in Colorado as required under Colo. Rev. Stat. Ann. § 1-4-802(1)(g). Specifically, § 1-4- 802(1)(g) states:

> No person shall be placed in nomination by petition unless the person is an eligible elector of the political subdivision or district in which the officer is to be elected and unless the person was registered as unaffiliated, as shown on the books of the county clerk and recorder, for at least twelve months prior to the last date the petition may be filed.

The district court found that this provision violated the Qualifications Clause of the United States Constitution, which provides:

> No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

U.S. Const., art. I, § 2 cl. 2.[1] Specifically, the district court stated that the provision imposes three restrictions on persons seeking election to the House of

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1 Other sections of the Constitution place limitations upon members of Congress. *See* U.S. Const. Art. I, § 6, cl. 2

> Representatives that are not found in the United States Constitution. Each is a contradiction of the constitutional language. First, the nominees must reside in the particular district in which they seek election; the Constitution permits residence anywhere in the state of election. Second, voter registration in Colorado requires residency in the state for at least thirty days. The Constitution requires state residency only "when elected." Third, Colorado prohibits voter registration by convicted felons serving sentences or on parole. See C.R.S. § 1-2-103(4). The Constitution contains no such restriction on election to Congress.

App. at 115-16. The district court entered summary judgment in favor of Mr. Campbell. This appeal timely followed.

II. DISCUSSION

A. The Registration Requirement

The State emphasizes that the statute's registration requirement is a valid exercise of the State's power because it serves an important regulatory interest. Specifically, the State (1) likens § 1-4-802(1)(g) to the California statute at issue in *Storer v. Brown*, 415 U.S. 724 (1974); (2) distinguishes § 1-4-802(1)(g)

(prohibition against members of Congress from holding other federal office); Amend. XIV, § 3 (disqualification from congressional office of persons who, having previously sworn to support the Constitution, subsequently engaged in insurrection, rebellion, or aid to the enemy).

from an impermissible substantive qualification; (3) characterizes the statute's requirement to register as procedural in nature; (4) suggests the statute serves to inform the electorate at large; and (5) claims the statute encourages a representative democracy. We shall consider each contention in turn.

1. The Elections Clause

The State contends that § 1-4-802(1)(g) is not an additional qualification but rather an enhancement to the State's authority to regulate its ballot under the Elections Clause of the United States Constitution. The Elections Clause provides that the "Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . . ." U.S. Const. art. I, § 4, cl.1. That the States maintain a "discretionary power over elections," a power restricted to the procedural regulation of the times, places and manner of elections, is not in dispute. *The Federalist No. 59*; *see also* The *Federalist No. 60* (examining the potential "danger" of "confiding the ultimate right of regulating its own elections to the

Union itself"). *See, e.g., Libertarian Party of Illinois v. Rednour*, 108 F.3d 768, 777 (7th Cir. 1997) (holding that Illinois ballot access petitioning requirements were "entirely procedural").

The Supreme Court has recognized that "States have a legitimate interest in regulating the number of candidates on the ballot." *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184-85 (1979). "The Elections Clause gives States authority to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved," without "the abridgment of fundamental rights." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 834 (1995) (striking down Arkansas term limits for election to Congress) (internal quotation marks and citations omitted).

The State suggests that the district court should have applied a more flexible approach, weighing the "'character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments . . .' against 'the precise interests put

forward by the State as justifications for the burden imposed by its rule.'" *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)). Under *Burdick*, because Mr. Campbell does not allege that § 1-4-802(1)(g) is discriminatory, the State need only show an important regulatory interest. *See id.* The State purports that regulation of the ballot satisfies this interest.

a. Regulatory Interest

In support of its regulatory interest, the State relies heavily on *Storer v. Brown*, 415 U.S. 724 (1974), in which the Supreme Court upheld California's "sore loser" ballot restriction. That provision limited independent candidate access to those candidates who were not affiliated at any time in the preceding one year with a qualified political party, thus prohibiting a candidate from losing a party primary and running as an independent. The Court stated that the "non-affiliation requirement no more establishes an additional requirement for the office of Representative than the requirement that the candidate win the primary to secure a place

on the general ballot or otherwise demonstrate substantial community support." *Id.* at 746 n.16. The State contends that *Storer's* disaffiliation requirement is analogous to Colorado's requirement of registration as a disaffiliated candidate and should therefore be upheld. Mr. Campbell distinguishes *Storer's* non-affiliation requirement as a "general state policy aimed at maintaining the integrity of the various routes to the ballot." *Id.* at 733.

Applying the flexible standard of *Burdick*-weighing the character and magnitude of the asserted injury against the State's proffered regulatory interests-we agree that the regulation involved in *Storer* is distinguishable from the registration requirement in the case at hand. In *Storer*, the Court recognized that the non-affiliation requirement served to prevent a losing candidate "from continuing the struggle and to limit the names on the ballot to those who have won the primaries and those independents who have properly qualified." *Id.* at 735. It required the candidate to demonstrate a significant amount of public

support before she gained access to the ballot, thereby "winnow[ing] out and finally reject[ing] all but the chosen candidates." *Id.* It also "further[ed] the State's interests in the stability of its political system," *id.* at 736, without discriminating against independents. See id. at 733. The "sore loser" disaffiliation requirement was therefore a valid exercise of California's power under Article 1, § 4. *See id.* at 736.

In contrast, here, Colorado's registration requirement does little to "winnow out" chosen candidates, but rather completely excludes those who have not registered. In *Storer*, disaffiliation did not require a candidate to register, but only to "be clear of political party affiliations for a year before the primary." *Id.* at 733. In fact, "the [independent] party candidate must not have been registered with another party for a year before he files his declaration." Id. at 733-34 (emphasis supplied). The Colorado registration requirement does not advance ballot housekeeping by limiting access to the ballot based on electoral support; instead, it limits access based on other exclusionary measures. The State's

reliance upon the Elections Clause is misplaced. *See Thornton*, 514 U.S. at 822 (stating that "[p]ermitting individual States to formulate diverse qualification for their representatives" far exceeds "the *national character* that the Framers envisioned and sought to ensure") (emphasis supplied); *see also The Federalist No. 57* ("No qualification of wealth, of birth, of religious faith, or of civil profession is permitted to fetter the judgment or disappoint the inclination of the people."). We do not see the State's important regulatory interest in this provision.

2. Impermissible Qualifications

Rather than analyze the registration requirement as a regulatory interest of the State, the district court focused on the requirement's violation of the Qualifications Clause. The evenhanded procedural regulations permissible under the Elections Clause are not at odds with the purposes of the Qualifications Clause. The Qualifications Clause reinforces the "the true principle of a republic . . that the people should choose whom they please to govern them." 2 *Debates on the Federal*

Constitution (J. Elliot ed., 1876), quoted in *Powell v. McCormack*, 395 U.S. 486, 540-41 (1969); *see also Thornton*, 514 U.S. at 820-21 (recognizing that "the right to choose representatives belongs not to the States, but to the people"). Consequently, the qualifications provision "is not alterable by the State governments." *The Federalist No. 52*. Article I provides "reasonable limitations," that allow "the door of this part of the federal government [to be] open to merit of every description, whether native or adoptive, whether young or old, and without regard to poverty or wealth, or to any particular profession or religious faith." Id.; *see also Thornton*, 514 U.S. at 832-33 (stating the purpose of the Elections Clause is to create "procedural regulations," not to give the States "license to exclude classes of candidates from federal office"); *Powell*, 395 U.S. at 550 (holding that attempted unseating of Congressman Powell, who had been convicted of mishandling congressional funds, was an impermissible imposition of additional qualifications).

The State argues that the district court erred in concluding that § 1-4-802(1)(g) is an impermissible qualification. The State proffers the Supreme Court's decision in Thornton as evidence of § 1-4-802(1)(g)'s "'evenhanded restrictions'" meant only to "'protect the integrity and reliability of the electoral process'" pursuant to the Elections Clause. *Thornton*, 514 U.S. at 834 (quoting *Anderson*, 460 U.S. at 788, n. 9).

The State cites the following language from Thornton for support:

> The provisions at issue in *Storer* and our other Elections Clause cases were thus constitutional because they regulated election procedures and did not even arguably impose any substantive qualification rendering a class of potential candidates ineligible for ballot position. . . . Our cases upholding state regulations of election procedures thus provide little support for the contention that a state-imposed ballot access restriction is constitutional when it is undertaken for the *twin goals of disadvantaging a particular class of candidates and evading*

the dictates of the Qualifications Clauses.

514 U.S. at 835 (emphasis supplied). But, unlike the California statute before the Storer Court, § 1-4-802(1)(g) fosters the twin goals discouraged in Thornton: It disadvantages a particular class of candidates and evades the dictates of the Qualifications Clause. First, by preventing those who are ineligible to register to vote (e.g., persons serving criminal sentences or on parole, see Colo. Rev. Stat. § 1-2-103(4), and non-residents, see id. § 1-2-101(1)(b)), from becoming a candidate under the guise of ballot regulation, and second by precluding all non-registering persons from candidacy.

Tellingly, additional language from Thornton supports the district court's conclusion that § 1-4-802(1)(g) imposes an impermissible qualification:

> [The provisions at issue in *Storer*] served the state interest in protecting the integrity and regularity of the election process, an interest independent of any attempt to evade the

> constitutional prohibition against the imposition of additional qualifications for service in Congress. *And they did not involve measures that exclude candidates from the ballot without reference to the candidates' support in the electoral process.*

Thornton, 514 U.S. at 835 (emphasis supplied). The State has not demonstrated that § 1-4-802(1)(g) protects the integrity or regularity of the election process and, as demonstrated above, the statute does involve measures that unjustly exclude various segments of the population from the ballot. We hold that the statute imposes additional qualifications to the exclusive qualifications set forth in the Constitution, and hence is impermissible.

3. Procedural Requirement

The State, relying heavily on voter registration cases, also attempts to characterize voter registration as a simple procedure, or mechanical adjunct, that is authorized under *Thornton*. *Id.* at 832 ("The Framers intended the Elections Clause to grant States

authority to create procedural regulations. . . . "). In *Colorado Project-Common Cause v. Anderson*, 495 P.2d 220, 222 (Colo. 1972) (en banc), the Colorado Supreme Court held that the act of registration is "not a qualification but a mechanical adjunct to the elective process" for the elector. *See also Duprey v. Anderson*, 518 P.2d 807, 808 (Colo. 1974) (en banc) ("Registering to vote does not come within the ambit of a constitutional qualification to vote."). The State then concludes that if a voter's registration is a "mechanical adjunct" then a candidate's act of registration is also a "mechanical adjunct."

Mr. Campbell relies upon *Dillon v. Fiorina*, 340 F. Supp. 729 (D.N.M. 1972) (per curiam) to counter the State's argument. In Dillon, the district court struck down a New Mexico statute that prevented any person from becoming a candidate for United States Senator "unless he ha[d] been affiliated with that party for at least one year prior to the filing date for the primary election." Id. at 730. The court determined that, because the statute in effect required residency for two years within New Mexico, it added an

"impermissible requirement" to the qualifications for candidacy. *Id.* at 731; *see also State ex rel. Chavez v. Evans*, 446 P.2d 445, 448 (N.M. 1968) (holding that provision requiring candidate to be a resident and qualified elector "unconstitutionally adds additional qualifications"); *Hellmann v. Collier*, 141 A.2d 908, 912 (Md. 1958) (per curiam) (invalidating requirement that a congressional representative must reside in the district from which he is elected); *see also Application of Ferguson*, 294 N.Y.S.2d 174, 175-76 (1968) (holding that state may not exclude convicted felon as a candidate for the United States Senate); *Danielson v. Fitzsimmons*, 44 N.W.2d 484, 486 (Minn. 1950) (holding that state cannot render person convicted of conspiracy to overthrow the government ineligible for Congress).[2]

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2 Although the Constitution, perhaps recognizing that States run the election process, implicitly authorizes states to preclude felons from voting in federal (or state) elections, *see* U.S. Const. amend. XIV, which allows States to deny the right to vote to those who have "participat[ed] in rebellion or other crime:, the Qualifications Clause prohibits this limitation from restricting ballot access to federal office. *See Libertarian Party of Illinois*, 108 F.3d at 777 (noting that ballot access petition requirements were "procedural in nature and d[id] not add substantive qualifications, [and did] not violate the Qualifications Clause.")

We agree with Mr. Campbell's assertions. We recognize that an administrative process designed to facilitate participation in the election process does not impinge on the qualifications of a voter, but we agree with the district court that the registration process for a candidate adds to a candidate's qualifications.

As the district court highlighted, an electoral requirement presupposes residency and, in turn, excludes groups from participating in the candidacy process. The authority to "create procedural regulations" as derived from the Elections Clause did "not . . . provide States with license to exclude classes of candidates from federal office." *Thornton*, 514 U.S. at 832-33. We agree with the district court that the requirement of registration is a substantive requirement that impermissibly imposes qualifications upon would-be candidates.

4. Registration as a Tool to Educate the Electorate

Perhaps some of the Framers remembered troubles they or their friends had with the law when under British sovereignty and preferred that the voters rather than one's former status decide federal office holding.

The State also suggests that the registration process under § 1-4-802(1)(g) is merely an education process for the voters and election officials to conclude that the candidate meets the requirements of Article I, § 2, cl. 2, that is, having attained twenty-five years in age, having been a United States citizen for seven years and being an inhabitant of the State when elected. Mr. Campbell proposes utilizing an affidavit to achieve the same ends. The State's argument is not persuasive. There is no question that the State can insure that its candidates meet the minimum requirements of the Qualifications Clause and in turn represent this fact to its electors through affidavits or a variety of other means.

5. Encouragement of a Representative Democracy

Finally, the State suggests that the simple registration requirement advances the State's interest in maintaining an active representative democracy, one that encourages participation in the electoral process: "A person who, for one reason or another, chooses not to be a part of th[e] electorate [by failing to register]

cannot logically *represent* the whole [i.e. be a candidate]." Aplt's Br. at 17-18. We hold that, even if the State is correct in arguing that a candidate who is registered to vote is somehow "better qualified" than a candidate who is not, this goal cannot be advanced by imposing unconstitutional requirements upon its candidates.

III. CONCLUSION

Thus we AFFIRM the district court's order granting summary judgment in favor of Mr. Campbell and its decision that Colo. Rev. Stat. Ann. § 1-4-802(1)(g) blocks the opening of "the door of this part of the federal government" by unconstitutionally restricting access to federal ballots. *The Federalist No. 52*. The Framers' plan, as noted earlier, allowed voters to pick among a variety of candidates for national offices. The Colorado provision fails, unconstitutionally, to give vent to their choice.

APPENDIX B

46 F.Supp.2d 1115, Campbell v. Buckley, (D.Colo. 1999)

*1115 46 F.Supp.2d 1115

United States District Court,
D. Colorado.

Douglas CAMPBELL, Kevin Wilkerson, Richard Adams, Joseph M. Buersmeyer, Karen Roberts and Norma-Jean Lingen,
Plaintiffs,
v.
Victoria BUCKLEY, in her official capacity as Secretary of State for the State of Colorado,
Defendant.

No. Civ.A. 98-M-1929.
May 3, 1999.

Would-be candidate for United States Congress sued Colorado Secretary of State, alleging that Secretary had improperly denied him a place on the ballot. Candidate moved for summary judgment, and Secretary also moved for summary judgment on the ground that state statute imposing requirements for unaffiliated candidates' nominating petitions, including candidate's being registered to vote, mandated denial. The District Court, Matsch, Chief Judge, held that statute violated Qualifications Clause of United States Constitution.

Plaintiff's motion for summary judgment granted; motion for injunction denied.

[1] UNITED STATES 7.1

393 ----
393I Government in General
393k7 Congress
393k7.1 In General.

States have no power to add qualifications for membership in Congress beyond those enumerated in United States Constitution. U.S.C.A. Const. Art. 1, § 2,

cl. 2.

[2] UNITED STATES 11

393 ----
393I Government in General
393k7 Congress
393k11 Regulation of elections of Senators and Representatives.

State statute which imposed restrictions on unaffiliated Congressional candidates' nominating petitions additional to those found in Qualifications Clause of United States Constitution, including being registered to vote and residence in district where candidate sought election, violated Qualifications Clause, even though candidate could theoretically be elected by write-in vote despite restrictions. U.S.C.A. Const. Art. 1, § 2, cl. 2; West's C.R.S.A. § 1-4-802(1)(g).

[3] INJUNCTION 80

212 ----
212I Subjects of Protection and Relief
212II(E) Public Officers and Entities
212k80 Elections and election officers.

Unaffiliated Congressional candidate who successfully challenged state statute imposing additional restrictions on nominating petitions of such candidates in violation of Qualifications Clause of United States Constitution was not entitled to injunction ordering state to place his name on ballot in next election, since such order would intrude on freedom of electorate to select candidates. U.S.C.A. Const. Art. 1, § 2, cl. 2; West's C.R.S.A. § 1-4-802(1)(g).

Paul Grant, Parker, CO, for plaintiffs.

Elizabeth A. Weishaupl, Assistant Attorney General, Denver, CO, for defendant.

MEMORANDUM OPINION AND ORDER

MATSCH, Chief Judge.

Plaintiff Douglas Campbell ("Campbell") brought this action claiming that the denial of his nomination by petition as a candidate for election to the United States House of Representatives for the November 3, 1998 election by the Secretary of State for the State of Colorado ("the Secretary") ***1116** violates Article I, Section 2, Clause 2 of the United States Constitution ("the Qualifications Clause"). Jurisdiction is provided by 28 U.S.C. §§ 1331, 1343(a)(3). Campbell moved for a preliminary injunction with his complaint, filed September 8, 1998. A first amended complaint was filed on September 14, 1998, adding five registered voters in Colorado's Second Congressional District as additional plaintiffs who support Campbell's candidacy. The preliminary injunction was denied at a hearing on September 15, 1998. The defendant then moved to dismiss and plaintiffs filed a response. At a hearing on December 18, 1998, the court transformed the filed papers into cross motions for summary judgment under Fed.R.Civ.P. 56(c). The determining facts are not disputed.

In Colorado candidates for elective office who are not nominated by a political party can be placed in nomination by petition only if they are eligible electors who have been registered as unaffiliated for at least 12 months prior to the last day the petition may be filed. Campbell, a United States citizen, is a resident of Arvada, Colorado, who is not a qualified elector because he has not registered to vote. The added plaintiffs and other voters sought to place Campbell's name on the November 3, 1998 ballot as an unaffiliated candidate for the United States House of Representatives for the Second Congressional District of Colorado by petition.

On July 14, 1998, Campbell submitted a nominating petition to the Secretary. On August 12, 1998, the Secretary notified Campbell that his petition contained only 571 valid signatures, less than the 800 votes required for ballot access. Campbell submitted a number of cure petitions on August 18, 1998. On August 19, 1998, the Secretary informed Campbell that, pursuant to C.R.S. § 1-4-802(1)(g), his name would not appear on the November 3, 1998 ballot because he was not registered to vote in Colorado.

[1] The United States Constitution provides as follows: "[n]o Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen." U.S. Const. art. I, § 2, cl. 2. These are the only qualifications for election. The states have no power to add other qualifications for membership in Congress. *See U.S. Term Limits, Inc. v. Thornton,* 514 U.S. 779, 800-01, 115 S.Ct. 1842, 131 L.Ed.2d 881 (1995).

The question presented by this case is whether the Secretary's application of the Colorado statutory restriction on nominating petitions to bar Campbell's candidacy for Congress has the effect of an added qualification for that office. The statutory language is this:

> No person shall be placed in nomination by petition unless the person is an eligible elector of the political subdivision or district in which the officer is to be elected and unless the person was registered as unaffiliated, as shown on the books of the county clerk and recorder, for at least twelve months prior to

> the last date the petition may be filed.... C.R.S. § 1-4-802(1)(g).

The Secretary determined that this restriction is relevant to a congressional candidate because C.R.S. § 1-4-501(1), in relevant part, states:

> No person is eligible to be a designee or candidate for office unless that person fully meets the qualifications of that office as stated in the constitution and statutes of this state on or before the date the term of that office begins.

Aside from the requirement that one must register to vote, section 1-4-802(1)(g) imposes three restrictions on persons seeking election to the House of Representatives that are not found in the United States Constitution. Each is a contradiction of the constitutional language. First, the nominees must reside in the particular district in which they seek *1117 election; the Constitution permits residence anywhere in the state of election. Second, voter registration in Colorado requires residency in the state for at least thirty days. The Constitution requires state residency only "when elected." Third, Colorado prohibits voter registration by convicted felons serving sentences or on parole. See C.R.S. § 1-2-103(4). The Constitution contains no such restriction on election to Congress.

[2] The Secretary argues that a restriction violates the Qualifications Clause only when it renders a candidate completely ineligible for election, citing *Hopfmann v. Connolly,* 746 F.2d 97, 103 (1st Cir.1984), *vacated on other grounds,* 471 U.S. 459, 105 S.Ct. 2106, 85 L.Ed.2d 469 (1985). Because Campbell could be elected through write-in votes, the Secretary maintains, the Colorado statute would be a

permissible regulation over the time, place, and manner of holding elections under Article I, Section 4, Clause 1 of the United States Constitution. *Hopfmann's* holding, however, is not as broad as the Secretary contends. There the plaintiff challenged a provision in the Massachusetts Democratic Party's charter requiring a candidate receive 15 percent of the convention vote in order to be placed on the party's primary ballot. *See Hopfmann*, 746 F.2d at 99. The First Circuit noted that the case did not involve state-imposed qualifications for office and held only that the Democratic Party could place restrictions on who may run in its own primary elections. *See id.* at 102-03.

The suggested rationale for the registration requirement is that it assures the electors that the candidate meets the constitutional qualifications for membership in the House of Representatives. But nothing in the Colorado requirement for registration as an elector requires seven years of United States citizenship. Additionally, the state and district time requirements for residency would prohibit the appearance on the ballot of persons who could qualify as residents on election day but not earlier.

The availability of write-in votes does not provide a realistic opportunity for election. The Supreme Court has repeatedly recognized that fact. *See Thornton*, 514 U.S. at 831 n. 45, 115 S.Ct. 1842; *Anderson v. Celebrezze*, 460 U.S. 780, 799 n. 26, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983) ("We have previously noted that [write-in voting] is not an adequate substitute for having the candidate's name appear on the printed ballot.") *Lubin v. Panish*, 415 U.S. 709, 719 n. 5, 94 S.Ct. 1315, 39 L.Ed.2d 702 (1974) ("The realities of the electoral process, however, strongly suggest that 'access' via write-in votes falls far short of access in terms of having the name of the

candidate on the ballot.").

Colorado has by its statutes significantly limited the selection of congressional candidates by adding qualifications which effectively interfere with the right of voters to select their national representatives. The denial of Campbell's petition because he is not a registered voter is contrary to the Qualifications Clause.

[3] Campbell requests an injunction ordering the Secretary to place his name on the November 2000 congressional ballot, relying primarily on cases concerning voter initiatives for legislation or for constitutional amendments. Such initiatives are qualitatively different from candidate petitions. A voter initiative seeks approval of a change in substantive law on a particular issue. Candidate petitions seek the election of a particular person to a specific office in a specific contest among candidates at a particular time. To impose Campbell's candidacy on voters who may participate in the next election in Colorado's Second Congressional District would be an unwarranted intrusion on the freedom of the electorate to select their candidates. It is

ORDERED that the plaintiffs' motion for summary judgment is granted; and it is FURTHER ORDERED that the defendant's ***1118.** motion for summary judgment is denied; and it is

FURTHER ORDERED that the application of that part of C.R.S. § 1-4-802(1)(g) requiring a congressional candidate to be an eligible elector of the congressional district in which he seeks election is declared to be in violation of the Qualifications Clause of the United States Constitution; and it is

FURTHER ORDERED that the plaintiff's request for an injunction ordering the Secretary of State for the State of Colorado to place

his name on the ballot as a candidate for the United States House of Representatives for the Second Congressional District of Colorado for the November 2000 election is denied; and it is

FURTHER ORDERED that the plaintiffs shall be awarded their costs